SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1238

VINCENT R. MANCUSI, Warden, Attica Prison, DR. WILLIAMS, DR. STARRUSS, and NURSE HOFFMAN, Attica Prison,

Petitioners,

against

LOUIS MARTINEZ,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners pray for a writ of certiorari to review the judgment and decree of the United States Court of Appeals for the Second Circuit entered in this cause on October 8, 1970.

Opinion Below

The opinion of the Court below, which is not yet reported, is appended hereto *infra* as Appendix "A".

Jurisdiction

Jurisdiction of this Court is invoked pursuant to Title 28, United States Code, § 1254(1). The decree of the Court of Appeals was entered on October 8, 1970 reversing the dismissal of respondent's complaint made under Title 42, United States Code, § 1983 by the United States District Court for the Western District of New York. The decision remanded the cause to the District Court with instructions to hold a hearing on the merits of respondent's allegations. Application was made to the Court of Appeals for a stay pending the filing and disposition of this petition for certiorari. That application was granted on November 16, 1970.

Question Presented

Whether the transfer of a state prisoner from a municipal hospital to the prison hospital and his subsequent return to the general prison population presents any basis for Federal intervention under Title 42, United States Code, § 1983?

Statement

On December 16, 1966 respondent was indicted by the Grand Jury of New York County for the crime of murder in the first degree (New York Penal Law of 1909, § 1044). On September 5, 1967 respondent pleaded guilty in Supreme Court, New York County, to the crime of manslaughter in the first degree in satisfaction of the indictment. He was sentenced on October 3, 1967 to a term of imprisonment of ten to twenty years (Davidson, J.).

On August 14, 1969 respondent commenced an action under Title 42, United States Code, § 1983 in the United States District Court for the Western District of New York. Named as defendants were Vincent R. Mancusi, Warden of Attica State Prison, Attica, New York, two

prison doctors and a male nurse, the petitioners herein. In his complaint respondent alleged that on July 28, 1969 he was transferred from the prison to Meyer Memorial Hospital in Buffalo, New York, for an operation on his leg. Respondent further alleged that this operation was performed at Meyer Memorial on July 28, 1969 by Drs. Papademetrius and Rigni.

After the operation respondent was confined to bed; he was told to lay flat on his back, to try not to move. The complaint alleges that the hospital doctors directed that respondent be given 50 milligrams of demoral and 50 milligrams of morphine as long as he was in pain. Respondent was told by these doctors that these measures were necessary for the success of the operation and for his personal safety.

Respondent alleged that on August 8, 1969, Warden Mancusi ordered him transferred back to prison. Respondent further alleged that he was removed from Meyer Memorial by two prison guards without a discharge from the hospital doctors. When the guards arrived at the Hospital the doctors had left for the day and, the complaint alleges, although the guards were warned by the person or persons in charge that he was not to be moved, respondent was handcuffed and made to walk in the presence of two hospital orderlies. Respondent was taken back to the prison and placed in the prison hospital.

Respondent alleged that on August 10, 1969 he was discharged from the prison hospital by Dr. Williams and returned to the general population. Respondent further alleged that after his discharge from the prison hospital he was required to stand to receive his meals; he was placed in a cell without facilities for his care and treatment and his condition was neglected. Respondent alleged that as a result of the lack of care and treatment prescribed by the doctors at Meyer Memorial he is in constant agony.

In his complaint in the District Court respondent requested the issuance of an order enjoining petitioners from depriving him of the care and treatment prescribed by the private hospital doctors. In addition, he sought $25,000 damages against Warden Mancusi, Dr. Williams and the two unnamed prison guards who removed him from Meyer Memorial on August 9, 1969. The District Court (CURTIN, J.), dismissed respondent's complaint *sua sponte*. In his memorandum decision, dated November 19, 1969, Judge Curtin held that the facts as alleged by respondent were insufficient to warrant relief under § 1983.

Judge Curtin granted respondent permission to proceed *in forma pauperis* and directed the clerk of the District Court to file respondent's notice of appeal to the United States Court of Appeals for the Second Circuit without the pre-payment of filing fees. On January 16, 1970 the Court of Appeals assigned counsel to represent respondent on the appeal.

On October 8, 1970, the Court of Appeals reversed the order of the District Court dismissing respondent's complaint and remanded the cause with instructions to hold a hearing on the merits of respondent's allegations. The Court of Appeals held that petitioners' conduct "was more than mere negligence or poor medical judgment; it is charged to have been deliberate indifference to, and defiance of explicit medical instructions, resulting in severe and obvious injuries." The Court concluded that the facts as alleged were sufficient to constitute a violation of respondent's constitutional rights and thus to state a cause of action under Title 42, United States Code, § 1983.

Reasons for Allowance of Writ

The decision of the Court below constitutes an unwarranted intervention in the administration of a state prison and an unprecedented application of the civil rights statutes. As such it expands unwholesomely the intrusion of federal courts in prison matters.

A.

In ruling that respondent's complaint was sufficient to state a cause of action under Title 42, United States Code, § 1983, the court below contravened the well established doctrine of federal non-intervention in state prison administration. As this Court recently stated in *Johnson* v. *Avery*, 393 U. S. 483, 486 (1970):

> "There is no doubt that the discipline and administration of state detention facilities are state functions. They are subject to federal authority only where paramount federal constitutional or statutory rights supervene."

Accord *Sostre* v. *McGinnis*, 334 F. 2d 906 (2nd Cir. 1964), *cert. den.* 379 U. S. 892; *Ford* v. *Board of Managers of New Jersey State Prison*, 407 F. 2d 837 (3rd Cir. 1969); *Childs* v. *Pegelow*, 321 F. 2d 487 (4th Cir. 1963), *cert. den.* 376 U. S. 932; *Granville* v. *Hunt*, 411 F. 2d 9 (5th Cir. 1969); *Haines* v. *Kerner*, 427 F. 2d 71 (7th Cir. 1970); *Courtney* v. *Bishop*, 409 F. 2d 1185 (8th Cir. 1969), *cert. den.* 396 U. S. 915; *Williams* v. *Field*, 416 F. 2d 483 (9th Cir. 1969), *cert. den.* 397 U. S. 1016; *Coppinger* v. *Townsend*, 398 F. 2d 392 (10th Cir. 1968).

While recognizing that the federal courts have been reluctant to interfere in state prison administration, the Court below held that federal intervention was necessary in the instant case to protect respondent's constitutional rights. Specifically, the Court ruled that the facts, as alleged by respondent, constituted cruel and unusual punishment in violation of the Eighth Amendment. However, it is well established that in order to attain the proportions of an Eighth Amendment violation, a complaint must suggest the possibility of "conduct that shocks the conscience" or a "barbarous act." *Robinson* v. *California*, 370 U. S. 660, 672 (1967); *Trop* v. *Dulles*, 356 U. S. 86 (1958); *Rochin* v. *California*, 346 U. S. 165 (1952); *Weems* v.

United States, 217 U. S. 349 (1910); *Wright* v. *McMann*, 387 F. 2d 519 (2nd Cir. 1967); *Ford* v. *Board of Managers of New Jersey Prison*, *supra*; *Jackson* v. *Bishop*, 404 F. 2d 571 (8th Cir. 1969); *Williams* v. *Field*, *supra*; *Bethea* v. *Crouse*, 417 F. 2d 504 (10th Cir. 1969).

In his complaint in the District Court respondent set forth two overt acts. The first overt act involved respondent's alleged removal from Meyer Memorial Hospital approximately two weeks after an operation on his right leg. Respondent asserted that he was transferred to Meyer Memorial on July 26, 1969. He further asserted that the operation was performed two days later by two hospital doctors. After the operation respondent was confined to his hospital bed; he was to lay flat on his back and to try not to move. The doctors allegedly ordered that respondent be given 50 milligrams of demoral and 50 milligrams of morphine as long as he was in pain.

Respondent claimed that on August 9, 1969 petitioner Mancusi, Warden of Attica Prison, ordered him removed from Meyer Memorial Hospital and that this transfer was accomplished without first obtaining a hospital discharge. The complaint does not establish any legal basis for the assumption that respondent, a prisoner even while in the private hospital, could not be moved without such discharge and transferred immediately to the prison hospital. Nevertheless, the Circuit Court concluded that respondent's removal from the hospital constituted "a deliberate indifference to [respondent's] condition and the surgeons orders".

Indeed, nowhere in his complaint did respondent allege that the warden had failed to check with Drs. Papademetrius and Rigni before ordering his removal from Meyer Memorial on August 9, 1969. In any event, there was no allegation that petitioner Mancusi acted maliciously, with an intent to inflict injury, or even that he knew that respondent could not be moved without jeopardizing the success of the operation or respondent's personal safety.

In the absence of such allegations, respondent's first overt act did not attain the proportions of an Eighth Amendment violation. See *United States ex rel. Hyde* v. *McGinnis*, 429 F. 2d 846 (2nd Cir. 1970); *Edwards* v. *Duncan*, 355 F. 2d 993 (4th Cir. 1966); *Hughes* v. *Noble*, 295 F. 2d 495 (5th Cir. 1961); *Coleman* v. *Johnston*, 247 F. 2d 273 (7th Cir. 1957); *Cates* v. *Ciccone*, 422 F. 2d 926 (8th Cir. 1970).

Respondent alleged that he was removed from Meyer Memorial on August 9, 1969 by two unnamed Attica prison guards. Respondent asserted that the guards arrived at the Hospital after the hospital doctors had left for the day. Although they were allegedly warned by the person or persons in charge that respondent should not be moved, the guards handcuffed respondent and required him to walk in the presence of two hospital orderlies.

The Court below rejected petitioner Mancusi's defense of lack of respondeat superior liability on the ground that "he ordered them to move [respondent] and they were following his orders directly and specifically." Although respondent alleged that Warden Mancusi ordered him removed from the Meyer Memorial Hospital on August 9, 1969, he did not claim that the warden had any knowledge that in moving respondent the guards would be acting contrary to specific instructions by the person or persons in charge at the Hospital. In the absence of knowledge that this was foreseeable, liability for the acts of the guards cannot be imputed by petitioner Mancusi under Title 42, United States Code, § 1983. As this Court recognized in *Monroe* v. *Pope*, 365 U. S. 167 (1961), liability under the Civil Rights Act is personal because "section [1983] should be read against the background of tort liability which makes a man responsible for the natural consequences of his actions" (365 U. S. at 187). See *Stamberg* v. *Daley*, 306 F. Supp. 277 (N. D. Ill. 1969); *Salazar* v. *Dowd*, 256 F. Supp. 220 (D. Colo. 1966); *Mack* v. *Lewis*, 298 F. Supp. 370 (W. D. Ky. 1968); *Runnels* v. *Parker*, 263 F.

Supp. 271 (C. D. Calif. 1967); *Jordan* v. *Kelly*, 223 F. Supp. 731 (W. D. Mo. 1963); *Pritchard* v. *Downie*, 216 F. Supp. 621 (E. D. Ark. 1963).

B.

The second overt act set forth in respondent's complaint involved his return to normal prison routine. Respondent alleged that after he was removed from Meyer Memorial Hospital on August 9, 1969 he was placed in the prison hospital. Respondent further alleged that on August 10, 1969 petitioner Dr. Williams discharged him from the prison hospital. After his discharge from the prison hospital respondent was required to stand to receive his meals; he was placed in a cell without facilities for his care and treatment and his condition was neglected.

The Court below characterized the action taken by Dr. Williams as a "deliberate disregard of orders and hospital requirements." However, respondent did not allege that Dr. Williams had failed to consult the specialists at Meyer Memorial before discharging him from the prison hospital. Nor was there any showing that the prison doctor was less competent to make a medical judgment about respondent's condition than the physicians at the hospital. Moreover, in the absence of any allegation of malice, intent to injure, or even knowledge that respondent had not sufficiently recovered to return to prison life, the actions taken by the prison doctor were clearly within the realm of medical judgment and did not attain the proportions of an Eighth Amendment violation. See *United States ex rel. Hyde* v. *McGinnis*, 429 F. 2d 864 (2nd Cir. 1970); *United States ex rel. Gittlemacker* v. *County of Philadelphia*, 413 F. 2d 84 (3rd Cir. 1969); *Granville* v. *Hunt*, 411 F. 2d (9th Cir. 1969); *Henderson* v. *Pate*, 409 F. 2d 507 (7th Cir. 1969); *Cates* v. *Ciccone*, 422 F. 2d 926 (8th Cir. 1970); *Stilner* v. *Ray*, 371 F. 2d 420 (9th Cir. 1967), *cert. den.* 386 U. S. 997; *Coppinger* v. *Townsend*, 398 F. 2d 392 (10th Cir. 1968); *Hopkins* v. *County of Cook*, 305 F. Supp.

1011 (N. D. Ill. 1969); *Mayfield* v. *Craven*, 299 F. Supp. 1111 (E. D. Cal. 1969).

It is respectfully submitted that since the overt acts in respondent's complaint related primarily to medical treatment, and not to the imposition of "punishment" in any meaningful sense of that word, there was no basis for federal intervention under 42 U.S.C. § 1983. The decision of the Court below will now involve the federal courts in questions of treatment that go far beyond the scope and purpose of the Eighth Amendment's proscription against cruel and unusual punishment.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Dated: New York, New York, January 7, 1971.

Respectfully submitted,

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APPENDIX "A"

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 242—September Term, 1970.

(Argued September 25, 1970 Decided October 8, 1970.)

Docket No. 35017

LOUIS MARTINEZ,

Appellant,

—v.—

VINCENT R. MANCUSI, Warden, Attica Prison, DR. WILLIAMS, DR. STAMBURG, and Nurse HOFFMAN, Attica Prison,

Appellees.

Before:

LUMBARD, *Chief Judge,*
ANDERSON and FRIENDLY, *Circuit Judges.*

Appeal from a decision of the United States District Court for the Western District of New York (John Curtin, *J.*) dismissing appellant's complaint made under section 1983 of the Civil Rights Act alleging inadequate medical care by prison officials.

Reversed and remanded.

Appendix "A"

HERMAN SCHWARTZ, Buffalo, N. Y., *for appellant.*

FRANK I. STRUM, II, Deputy Assistant Attorney General (Louis J. Lefkowitz, Attorney General of the State of New York, and Samuel A. Hirshowitz, First Assistant Attorney General, on the brief), *for appellee.*

LUMBARD, *Chief Judge*:

This is an action under the Federal Civil Rights Act, 42 U.S.C. § 1983, for willful violation by prison officials of appellant's right to adequate medical care. The District Court for the Western District of New York dismissed appellant's complaint on the ground that the facts alleged were insufficient under the Civil Rights Act to state a cause of action. We reverse the district court's dismissal of the complaint and, without deciding the merits of appellant's complaint, remand for a hearing, at which appellant should be given the opportunity to show the responsibility and liability which his allegations assert.

Since the defendants filed no answer to appellant's complaint, and since the district court dismissed that complaint solely on the basis of the facts alleged, we look only to the facts as alleged by the appellant to determine whether the dismissal was warranted. Appellant Martinez, a young inmate of Attica Prison, suffers from infantile paralysis of the right leg. On December 16, 1966, he was indicted for the crime of murder in the first degree. On September 5, 1967, he pleaded guilty to the crime of manslaughter in the first degree. He was sentenced on October 3, 1967 to a term of imprisonment of ten to twenty years.

In his complaint, Martinez alleges that on June 26, 1969, he was taken from Attica Prison to Meyer Memorial Hospital in Buffalo, where, on June 28, he underwent

surgery on his right leg by Doctors Papademetrius and Rigni. After the operation, the surgeons directed that in order for the operation to be successful, appellant lie flat on his back and move his legs as little as possible, and that he be given fifty milligrams of demarol and fifty of morphine as long as he was in pain.

Martinez alleges that on August 9, 1969, defendant Mancusi, the prison warden, ordered him transferred back to the prison. He further alleges that he was removed from the hospital on that day by two prison guards without a discharge from Doctors Papademetrius and Rigni. When the guards arrived at the hospital, the surgeons had left for the day. The person or persons in charge of Martinez warned the guards that he could not walk and was not even to be moved. In blatant disregard of these instructions, and without checking with the surgeons for either a formal discharge from the hospital or advice as to his treatment, the guards handcuffed appellant and made him walk out of the hospital. Appellant was taken back to Attica Prison and placed in the prison hospital.

Martinez further alleges that on the very next day he was discharged from the prison hospital by defendant Dr. Williams, the prison doctor, and was placed in a cell with no facilities for his care. Despite the specific orders by the surgeons, appellant was forced to move his leg and to stand to receive his meals, with the result that the operation ultimately proved unsuccessful. Moreover, he was not given the demarol or morphine prescribed to alleviate his pain, and has thus been in constant and unrelieved pain.

On August 14, 1969, Martinez commenced the instant civil rights action in the district court, seeking an order enjoining the named defendants from depriving him of the care and treatment prescribed by the surgeons, and seeking $25,000 damages against Warden Mancusi, Dr. Williams, and the two unnamed prison guards who removed him

from the hospital. On the facts alleged, the district court dismissed the complaint.

Although federal courts are reluctant to interfere in the normal processes of state prison administration, they will not hesitate to intervene when action is clearly necessary to protect a prisoner's constitutional rights. *Wright* v. *McMann*, 387 F. 2d 519, 522 (2d Cir. 1967). Hence an action against prison officials for inadequate medical care may be brought under the Civil Rights Act in the federal district courts when the prisoner's allegations rise to the level of cruel and unusual punishment in violation of the Eighth Amendment.

In *Church* v. *Hegstrum*, 416 F. 2d 449 (2d Cir. 1969), we delineated the applicable criteria for determining whether a prisoner's claim of inadequate medical care is sufficient to allege an Eighth Amendment violation and thus to constitute a cause of action under the Civil Rights Act. In that case, we upheld the dismissal of the complaint because the facts alleged in that complaint sounded only in negligence. There was no allegation of "severe and obvious injuries," and no allegation "that any of the defendants knew that treatment was required for the preservation of Church's life, that Church ever requested such treatment, or even that any defendant was aware of his condition." We held that "a complaint claiming failure to provide medical care . . . must suggest the possibility of some 'conduct that shocks the conscience,' . . . or 'barbarous act'. . . . Mere negligence in giving or failing to supply medical treatment alone will not suffice." *Church* v. *Hegstrum*, *supra*, at 450-51.

Earlier this year, in *United States ex rel. Hyde* v. *McGinnis*, —— F.2d ——, No. 31265 (2d Cir. June 19, 1970), we sustained the dismissal of the petitioner's complaint because the entire basis of his claim was a disagreement with the prison doctor's professional judgment. "Virtually

every . . . instance in which a court has granted relief [under § 1983] has been characterized by a willful refusal to treat a known ailment, . . . and not the mere exercise of faulty judgment" (Slip op. 3376).

Martinez's allegations in this case meet the criteria of *Hegstrum* and *Hyde* for an Eighth Amendment violation and thus a cause of action under the Civil Rights Act. The alleged conduct of the prison authorities in removing him from the hospital before he was ready to be moved, despite the surgeons' orders and without obtaining a discharge, was more than "mere negligence." If proven, it would constitute a deliberate indifference to, and defiance of, the express instructions of the operating surgeons and the hospital attendants. According to the allegations, the guards came to the hospital at the direct order of the prison warden; and in open disobedience of the warnings of the person or persons in charge of appellant, they handcuffed appellant and made him walk.

Defendant Mancusi seeks to evade responsibilty on the ground that the allegations do not show him to be guilty of more than negligence. He contends that since there is no allegation that he knew or should have known of the surgeons' orders or that appellant could not be moved, his order to remove appellant, without first finding out this information, was merely negligent and did not constitute deliberate defiance of the surgeons' orders. He further seeks to avoid responsibility on the ground that, while the actions of the guards may have constituted willful misconduct, those actions cannot be imputed to him since there is no doctrine of "respondeat superior" under the Civil Rights Act.

We reject both of these contentions. Surely the warden knew that appellant's operation was a very delicate one; and for him to order appellant's removal from the hospital less than two weeks after that operation, without checking

with the operating surgeons and without obtaining a hospital discharge, would be, at best, a deliberate indifference to appellant's condition and the surgeons' orders. Moreover, the warden cannot escape liability by claiming that, under the allegations, it appears that whatever was done was done by the guards. It is alleged that he ordered them to move appellant, without obtaining a discharge, and they were following his orders directly and specifically. Indeed, the allegations—which must be taken as true—impose full responsibility for this move on him. Thus Martinez should at least have the opportunity to be heard on his allegation that the warden was responsible for what the guards did.

Once he was returned to Attica, Martinez alleges, he was discharged from the prison hospital by defendant Dr. Williams after only one day, was required to stand, and was not given adequate facilities or the prescribed medication. All this was done despite the surgeons' direct orders to the contrary. Dr. Williams argues that he did not know of those orders and did not know that appellant had not sufficiently recovered to return to prison life, and so his actions were merely negligent. But his alleged refusal to check with Meyer Hospital and with the surgeons who were handling appellant there may be shown to have been a deliberate indifference to appellant's condition and to what the surgeons' orders might have been.

Moreover, the doctor's alleged misconduct in this case is not, as it was in *Hyde*, a matter of medical judgment. Under the allegations here made, his actions were in deliberate disregard of orders and hospital requirements. Obviously, courts cannot go around second-guessing doctors. But neither can they ignore gross misconduct by a doctor, especially when it violates specific orders by the specialists in charge of the case.

Appendix "A"

Clearly, then, the defendants' conduct, as alleged by Martinez, was more than mere negligence or poor medical judgment; it is charged to have been deliberate indifference to, and defiance of, explicit medical instructions, resulting in serious and obvious injuries. Although we express no opinion on whether appellant should ultimately prevail in his suit, we hold that the facts as alleged are sufficient to constitute a violation of his constitutional rights and thus to state a cause of action under the Civil Rights Act; hence they are sufficient to warrant a hearing on the question. If advised to do so, Martinez should be given leave to file an amended complaint within a reasonable time.

We commend assigned counsel, Herman Schwartz, Esq., for his very able representation of appellant Martinez.

Reversed and remanded.